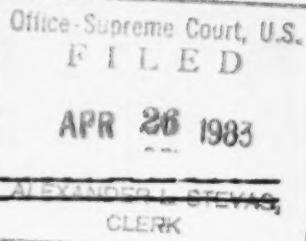


82 - 1742

NO _____



IN THE
SUPREME COURT
OF THE UNITED STATES
OCTOBER TERM, 1983

Dan Forney,
Petitioner

vs.

Samuel L. Rodgers, Commonpleas Judge
Washington County
Commonwealth of Pennsylvania,
Respondent

PETITION FOR WRIT OF PROHIBITION TO THE
COMMONPLEAS COURT OF WASHINGTON COUNTY,
COMMONWEALTH OF PENNSYLVANIA

Dan Forney, Petitioner
R. D. # 2
Avella, Pennsylvania 15312

QUESTION PRESENTED

1. Whether the County of Washington,
Commonwealth of Pennsylvania has juris-
diction in commercial maritime power of
limited liability for the payment of debts.

Parties to the Proceeding

Petitioner,

Dan Forney

Respondent,

Judge Samuel L. Rodgers

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Butler v. Boston and Savannah Steamship co. 130 U.S. 527.....	9
OTHER AUTHORITIES CITED	
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NO _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

Dan Forney,
Petitioner

vs.

Samuel L. Rodgers,
Respondent

PETITION FOR A WRIT OF PROHIBITION TO THE
COMMONPLEAS COURT OF WASHINGTON COUNTY,
PENNSYLVANIA

Statement of Jurisdiction

The jurisdiction of this court is invoked
under Title 28, United States Code, Section
1651 (a)

Constitutional Provision Involved

United States constitutional, Article III,
Section II,

"...to all Cases of admiralty and maritime jurisdiction, ...those in which a state shall be a party, the Supreme Court shall have original jurisdiction."

STATEMENT OF THE CASE

On December 17, 1982 the Commonpleas Court of Washington County, Pennsylvania ruled in maritime limited liability for the payment of debts when it found this petitioner guilty of failing, refusing or neglecting to file final returns for earned income tax and pay taxes due, under Act 511; P.S. 53 sec. 6913, a limited liability act. This court further ruled on the 27th day of January, 1983 in limited liability for the payment of debts when it held this petitioner hostage against his will and ordered "payment" of costs of prosecution of this instant cause under the threat of immediate imprisonment. A timely appeal was taken to the Commonwealth Court of

Pennsylvania, a court of appeals. Since that time it has been discovered that the state courts cannot rule in commercial maritime limited liability for the payment of debts as this is reserved to the federal courts. Therefore, this petitioner is exercising his right of one appeal to the United States Supreme Court as per Article III, section II which is the only court competent to rule in this matter.

REASON FOR GRANTING THE WRIT

The County of Washington, Pennsylvania through its acts of forcing "payment" has usurped the commercial powers of Article III, sec. II, of the United States Constitution, which said commercial powers of maritime limited liability for the payment of debts are reserved for the United States government and the Federal District Courts.

LEGAL CLAIMS

The three requirements necessary for the Writ of Prohibition are present in the instant case:

1. That the person it is directed against has exercised commercial maritime limited liability for the payment of debt powers.
2. That the exercise of said limited liability power by said persons is unauthorized by law.
3. That it has resulted in injury and will continue to result in further injury for which there is no other adequate remedy.

Wherefore, this petitioner prays to this Honorable Court, and requires the issuance of a Writ of Prohibition by this court directed to respondent Judge Samuel L. Rodgers, directing said judge to refrain and desist from any further proceedings in said action #406 of 1982. Also any further pending actions of the same nature which might come up in the future, and requiring said actions to be thence dismissed and for such other and further relief

as this Honorable Court seems proper and just.

Dan Forney
Dan Forney
, Petitioner
R.D.#2
Avella, Pennsylvania 15312

MEMORANDUM IN SUPPORT OF PETITION FOR
WRIT OF PROHIBITION

The issue framed by this petitioner herein whether the County of Washington, Commonwealth of Pennsylvania has jurisdiction in commercial powers of maritime limited liability for the payment of debts.

Under the Common Law there is no limited liability for the payment of debts. New Jersey Steam Navigation v. The Merchants Bank 6 Howard

342

As the Constitution at Article III, sec. II extends the judicial power of the United States to all cases of admiralty and maritime jurisdiction is held to be exclusive, the powers of legislation on the same subject must necessarily be in the National Legislative and

not in the State Legislature. Butler v.

Boston and Savannah Steamship Co. 130 U.S. 527

The entire admiralty power of the country is lodged in the United States judiciary and Congress intended by this ninth section to invest the district courts with this power as courts of original jurisdiction. The exclusive jurisdiction in admiralty cases was conferred on the National Government as closely connected with the grant of the commercial powers. New Jersey Steam Navigation v. The Merchants Bank (supra)

It is the duty of the Federal District Courts to expand on the subject of the commercial powers of maritime limited liability for the payment of debts and not the state courts. Butler v. Boston and Savannah Steamship Co. (supra)

The powers of Commercial limited liability for the payment of debt was granted to the United States Government under the United States Constitution and codified at 46 U.S.C. but nowhere is that power granted to the states.

Dan Forney
Dan Forney, Petitioner

VERIFICATION

Dan Forney having been duly affirmed,
hereby deposes and says that he has read the
above petition for Writ of Prohibition and
states the facts are true and correct to the
best of his limited knowledge, information
and belief.

Dan Forney
Dan Forney

AFFIRMED AND SUBSCRIBED BEFORE ME THIS 13th DAY
OF April, 1983.

Shirley Bonanno
Notary Public

My Commission expires:

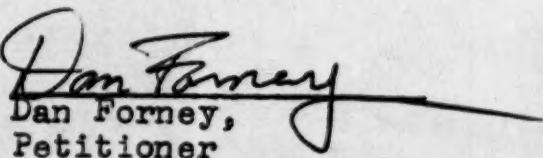
SHIRLEY BONANNO
NOTARY PUBLIC, WASHINGTON
WASHINGTON CO., PA.
MY COMMISSION EXPIRES
APRIL 3, 1985

SHIRLE
NOTARY PUB
WASHIN
MY COMM
APR

CERTIFICATION OF SERVICE

The undersigned certifies that true copies of the attached petition for Writ of Prohibition have been forwarded to the interested parties listed below via first class mail, postage prepaid and addressed to the following:

1. Samuel L. Rodgers, Judge
Commonpleas Court
Washington County Courthouse
North Main Street
Washington, Pennsylvania 15301
2. Office of the Prothonotary
Commonwealth of Pennsylvania
Sixth Floor, South Office Bldg.
Harrisburg, Pennsylvania 17120
3. Herman J. Bigi, District Attorney
Washington County Courthouse
North Main Street
Washington, Pennsylvania 15301
4. John W. McCreight, Solicitor
500 Washington Trust Building
Washington, Pennsylvania 15301


Dan Forney,
Petitioner

United States of America)
Commonwealth of Pennsylvania)
County of Washington)
)

S.S.

AFFIDAVIT

Dan Forney being duly affirmed according to law deposes and says:

1. I am Dan Forney, the person named as petitioner.
2. I live at law on the cash basis and have no insurable interest in a joint maritime adventure for profit under limited liability for the payment of debts.
3. It has always been my intent to live at law and these people will not let me alone and are trying to compel me into the maritime limited liability for the payment of debts by filing reports and forms.

And further: I have no privileges or franchises granted by the state including the franchise (license) of marriage.

4. That the above is true and correct

to the best of my limited knowledge and belief.

Signed

Dan Forney

AFFIRMED AND SUBSCRIBED BEFORE ME THIS 13th
DAY OF April, 1983.

Shirley Bonanno
Notary Public

My Commission expires:

SHIRLEY BONANNO
NOTARY PUBLIC, WASHINGTON
WASHINGTON CO., PA.
MY COMMISSION EXPIRES
APRIL 3, 1985

SHIRLEY BONANNO
NOTARY PUBLIC, WASHINGTON
WASHINGTON CO., PA.
MY COMMISSION EXPIRES
APRIL 3, 1985

Jan 12 1983

No. 82-1742

RECEIVED

MAY 9 1983

Office of the Clerk
SUPREME COURT U.S.

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA)
VS)
DAN FORNEY)

NO. 406 of 1982

HEARING ON APPEAL OF TOWNSHIP
VIOLATION IN THE ABOVE ENTITLED CAUSE
BEFORE THE HONORABLE SAMUEL L. RODGER
J., on December 17, 1982, in Courtroom
#5.

APPEARANCES:

John B. McCreight, Esq., Solicitor of
Avella School District.

CHARGE: Violation of Tax Enabling
Act; Act 511.

O R D E R

AND NOW, this 17th day of December,
1982, after considering all the testimony, evidence submitted,
and arguments of counsel and the defendant, we find the defendant
guilty as charged.

We will give the defendant ten days to file a

Motion for New Trial. If such a motion is filed within the ten days we will set Thursday, January 27, 1983 at 1:30 p.m., as the time in which we will pass upon your motions if you have filed them and also impose sentence, if any, on the basis of the Court finding that you are guilty as charged.

If the defendant decides to waive his right to file a Motion for New Trial between now and the ten days hence, he is to notify the Court of the same and we will set a date for sentencing.

/s/ Samuel L. Rodgers J.

Jean O. McCleight, Esq.

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

33 JAN 27 PM 12 83

COMMONWEALTH OF PENNSYLVANIA)
CLERK OF COURTS) No. 406 of 1982
VS.)
WASHINGTON CO., PA.)
DAN FORNEY)

ORDER

AND NOW, this 27th day of January, 1983,
after consideration of the argument of the solicitor for the
School District, the sentence of the Court is that the defendant,
DAN FORNEY, who has failed to appear after notice, pay the costs
of prosecution forthwith. In lieu of the payment of costs, the
defendant is sentenced to imprisonment in the Washington County
Jail for a period of thirty (30) days. In the event that the
defendant, DAN FORNEY, pays the costs of prosecution forthwith,
and pays or makes arrangements to pay all sums due the Avella
School District under Act 511 within the next ten (10) days and
files proper returns of his income tax within said ten (10) days,
he shall be placed on probation. The defendant having failed to
appear and pay the costs as ordered by the Court a bench warrant
shall issue for his arrest and upon his apprehension he shall be
brought before this Court immediately.

/s/ SAMUEL L. RODGERS
Samuel L. Rodgers, J.

John B. McCaughey Esq.

RECEIVED

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA
'23 JAN 27 PM 3 CRIMINAL DIVISION

CLERK OF THE COURT
COMMONWEALTH OF PENNSYLVANIA)
vs.) No. 406 of 1982
DAN FORNEY)

ORDER

AND NOW, this 27th day of January, 1983,
upon motion of the defendant the order filed previously this
morning is vacated. The Court having found the defendant guilty
as charged, the sentence of this Court is that the defendant pay
the costs of prosecution in this matter forthwith. If the
defendant fails to pay these costs, the defendant is sentenced
to imprisonment in the Washington County Jail for a period of
thirty (30) days. If the defendant pays the costs of prosecution
forthwith and pays or makes arrangements to pay all sums due the
Avella School District under Act 511 within the next ten (10)
days and the defendant files proper returns of his income tax
within the next ten (10) days, the defendant will be placed on
probation. The sheriff is directed to take the defendant into
custody.

/s/ SAMUEL L. RODGERS
Samuel L. Rodgers, J.

COMMONWEALTH

Versus

Daniel Torney

IN THE COURT OF COMMON PLEAS

Criminal Division

of the

County of Washington, Pa.

No. 406 of 1982

Charge Failure to pay
taxes

SENTENCE

And now, to-wit: 1-27 1982, the defendant

being called for sentence on { his plea _____
the verdict _____ is sentenced by the Court to _____

D is ordered to pay costs of
prosecution / or be / imprisoned.
for 30 days

Attest:

s / Judge Rodgers
Judge

Clerk of Courts

Rec'd 2-7-83
Dan Forney

-1-

100 FEB 2 1983 05

CLERK OF COURTS
WASHINGTON COUNTY, PA.

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA)
vs.) No. 406 of 1982
DAN FORNEY)

ORDER

AND NOW, this 13th day of February 1983, upon consideration of Commonwealth's motion to modify the sentence of January 27, 1983, relief is granted/denied and the order of sentence is/is not hereby modified to read: the defendant Dan Forney is sentenced to pay a fine of \$_____, and costs, and, in default of payment of said fine and costs to be imprisoned in the Washington County Jail for a period of thirty days; at _____.m. on March ____, 1983, if the defendant has not paid said fine and costs in full, at that time he shall appear in courtroom no. _____ and show cause, if any there be, why he should not be held in default on said payment of fine and costs and be immediately committed to the Washington County Jail for a period of thirty days.

/s/ Samuel L. Rodgers
Samuel L. Rodgers, J.

100%
0, mail
2-23-83

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA)
vs.) No. 406 of 1982
DAN FORNEY)

ORDER

AND NOW, this 20th day of February, 1983, it appearing that the original sentence in this matter consisted exclusively of costs, and imprisonment only in default of the payment of costs, it further appearing that the costs in this matter have been paid, no further sentence or penalty is contemplated and accordingly the defendants petition to modify sentence is hereby denied.

Si Samuel J. Rougas (J)

100-2-51

COURT OF COMMON PLEAS
OF WASHINGTON COUNTY

COMMONWEALTH OF PENNSYLVANIA)
)
 PLAINTIFF)
)
 VS.)
)
DAN FORNEY DEFENDANT)
)

CRIMINAL
NO. 406 of 1982

NOTICE OF APPEAL

Notice is hereby given that Dan Forney, defendant above named, hereby appeals to the Superior Court of Pennsylvania from the order entered in this matter on the 27th day of January of 1983.


Dan Forney

RD#2 Avella, Pa.
15312

4I2 587 3I34

Daniel Forney
R. D. #2
Avella, PA 15312

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA)
)
VS.) NO. 406 of 1982
)
DANIEL FORNEY,)
)
Defendant.)

BEFORE: Rodgers, J.

OPINION OF THE COURT

Rodgers, J.

February 28, 1983.

The tax collector for the Avella School District of Washington County, Pennsylvania charged the defendant, Daniel Forney, with violation of Act 511, "The Local Tax Enabling Act", 53 P.S. § 6901, et seq., in that the defendant "failed, refused and - or neglected to file final return for earned income or net profit and pay taxes due for the year 1980".

After hearing before a local magistrate, the defendant was found guilty and sentenced to pay a fine of Three Hundred Dollars (\$300.00) and costs.

The defendant, Forney pro se, appealed to this court, and after hearing de novo, the defendant was found guilty as charged and given ten days to file motions for a new trial and in arrest of judgment.

The defendant, Forney, who has represented himself throughout these proceedings, filed a motion for "judgment notwithstanding the verdict" or, in the alternative, a new trial. The court, after argument, dismissed defendant's post verdict motions and sentenced him to pay the costs of prosecution forthwith, and upon failure to do so to imprisonment for thirty days with the provision that if in prison he would be placed on probation if he paid the costs of prosecution and filed and paid the taxes due, if any, to the Avella School District for the year 1980. Defendant paid the costs of prosecution and was not imprisoned.

The defendant having appealed this court's sentence, this opinion is written in support of the court's order.

The defendant, apparently in good faith, is in rebellion against duly constituted authority on what he deems to be constitutional and religious grounds.

A somewhat similar case from the Avella area is Commonwealth v. David P. Venen, 288 Pa. Super 143, 431 A.2d 329 (1981), where the defendant pro se argued that on the basis of the Act of the General Assembly of March 12, 1842, 72 P.S. § 3301, and

the Act of Congress of June 5, 1933, 31 U.S.C.A. § 463, this nation is without legal tender and the defendant was unable legally to pay the fines assessed.

The defendant, Forney, also relies in part on 72 P.S. § 3301, although his argument is less coherent than the defendant in Venen. This argument of Forney has been rejected by the Superior Court in the Venen case.

The defendant also alleges in sweeping terms violations of his constitutional rights, including the first, fourth, fifth, seventh, eighth, ninth, thirteenth and fourteenth Amendments of the U. S. Constitution "as well as those guaranteed to him under the Declaration of Rights as found in the Constitution for the Commonwealth of Pennsylvania".

Of course, no right to jury trial exists in a summary proceeding for an ordinance violation where a sentence of six months or less may be imposed. Commonwealth v. Bacik, 61 Pa. Cmwlth. 552, 434 A.2d 860 (1981).

The defendant also claims the ordinance unconstitutional because it requires him to incriminate himself. This issue too has been resolved against the defendant. Philadelphia v. Cline, 158 Pa. Super 179 at 182, 183 (1945). The constitutionality of earned income tax ordinances imposed by municipalities have been passed upon favorably in Butcher v. Philadelphia, 333 Pa. 497 (1938) and Dole v. Philadelphia, 337 Pa. 375 (1940).

At the hearing before this court the defendant was not required nor did he testify. However, the Commonwealth presented evidence by Emanuel Paris that in the year 1980 he had made a substantial payment to Forney, who is a self-employed independent contractor, for services rendered, and the local tax collector testified that Forney had failed to file or pay any earned income tax for the year 1980.

The court found this testimony credible and adjudged the defendant guilty on the basis of this testimony.

Initially, this defendant also complained of the actions of the magistrate which this court finds to be without foundation, and in any event are moot.

Forney also claimed the prosecution was fatally flawed because it was initiated by a private complaint signed by the tax collector instead of a citation.

The affiant in this case, Ethel Alvarez, is the duly appointed tax collector. Such tax collector is not a police officer and has no power of arrest. See 53 P.S. § 6913 V.

Therefore, she was required to proceed by private complaint rather than by citation. In any event, the defendant was not prejudiced as required by Pa. R. Crim. P. 70.

This court imposed no fine because in this case the defendant is apparently acting in good faith, although the court believes him to be confused and misguided.

The court understands another prosecution against this defendant is now pending alleging additional violations.

If this defendant continues to defy valid earned income tax ordinances, more stringent sanctions will, of course, have to be imposed.

Samuel L. Rodgers
Samuel L. Rodgers, J.

COURT OF COMMON PLEAS WASHINGTON COUNTY

COMMONWEALTH OF PENNSYLVANIA)
Plaintiff) Criminal Docket # 40 of 1982
vs.)
DAN FORNEY)
Defendant.)

AMENDED NOTICE OF APPEAL FOR TRANSFER TO COMMONWEALTH COURT

It now appears to this defendant, that since the Plaintiff has filed Notice of Appeal in the Commonwealth Court, that my Appeal with filing fee, should be transferred there also as per Title 42 Pa. C. S. § 762 (a) (4) (A)

Thank You

Dan Forney
DAN FORNEY

CERTIFICATE OF SERVICE

The following Ammended Notice of Appeal for transfer to Commonwealth Court was delivered to the following parties in the manner designated below upon the 11th day of March 1983.

John W. McCreight, Soliciter for Plaintiff Mailed 1st class
on the 11th day of March, 1983

800 Washington Trust Building
Washington, PA. 15301

Dan Forney
Dan Forney